

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PRAMIL S.R.L. (ESAPHARMA),]
Petitioner,]
v.] Cancellation No. 92032341
MICHEL FARAH,]
Registrant.]

PETITIONER'S RESPONSE TO REGISTRANT'S
MOTION FOR RECONSIDERATION

On March 28, 2005, the Board issued an order denying the third request for an extension of time for the Registrant to take it's testimony in chief. The Interlocutory Attorney also treated this third request which was received after the close of the period sought to be extended, as a Motion to Reopen the Registrant's Testimony Period.

In a well reasoned opinion, the Interlocutory Attorney considered each of the factors set forth in the *Pioneer* case¹

¹*Pioneer Investment Services Company v. Brunswick Associates LTD Partnership*, 507 U.S. 380 (1993)



and held that the reasons set forth by the Registrant for failing to take testimony were not well taken and did not rise to the excusable neglect standard.

Nothing in this last Motion does anything to change the present situation.

Registrant's Motion sets forth statements never before advanced in previous Motions for extensions and relies upon use dates that are not of record in this case.

Petitioner has already filed its Brief after the close of Registrant's testimony period. All of the effort advanced by Petitioner in the preparation of this document and the cost to the client would be lost. There would be clear prejudice to the Petitioner and this is one of the *Pioneer* factors.

Registrant, for reasons unknown to the Petitioner, apparently proceeded to take a testimony deposition in Florida after its last extension of its testimony period had expired, apparently relying on some perception that the late-filed third request would be granted.

It is common courtesy in the trademark bar for counsel to confer with regard to proposed testimony dates in order to insure that the selected date is available on the calendar of the interested parties. Counsel for the Registrant did not extend such courtesy here. In fact a Notice of the deposition was sent by facsimile to the undersigned attorney's office on

Friday. March 18, 2005 after the close of the office late in the afternoon. This provided less than one week to prepare and attend if counsel were aware of the date. Mr. Rogero was informed on page 5 of Petitioner's Response to his previous Motion for the third extension that the undersigned would be on an extended three week trip to the far east beginning on March 12, 2005.

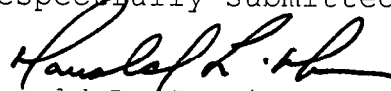
Despite having full knowledge that counsel would not be in the country, Mr. Rogero submitted the Notice of Deposition which was never seen until counsel returned to his office on March 30, 2005. It is believed that Mr. Rogero purposely took this action with the full knowledge that the undersigned would not be available and could not respond or attend. The statement in footnote 4 of the most recent motion stating that "Petitioner's counsel chose not to participate in the taking of Registrant's testimony" is totally false.

Registrant has had it's day in "court" and has failed to take appropriate action within the generous extension previously granted.

Time limits are set by the Rules and by the Board for the orderly and timely conduct of business by the Board. Certain reasonable extensions are liberally granted for cause, but there must come a time when certain actions are required. This has been decided in the Board order of March 28, 2005.

The Motion for Reconsideration should be summarily denied
in light of fairness and of prejudice to the Petitioner.

Respectfully submitted,



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April 11, 2005

CERTIFICATE OF SERVICE

This is to certify that a copy of Petitioner's Response
to Motion for Reconsideration was served this 11th day of
April, 2005 by first class mail with proper postage affixed on
counsel for the Registrant, David M. Rogero, Esq., 2600
Douglas Road, Suite 600, Coral Gables, FL 33134.



Donald L. Dennison